

Remarks

This application has been reviewed in light of the Office Action of September 3, 2004. Claims 1-19 are pending, and all claims are rejected. In response, claim 1 is amended, and the following remarks are submitted. Reconsideration of this application, as amended, is requested.

Claims 1-5, 9, 10, 12, 13, 17, and 18 are rejected under 35 USC 103 over Shelton US Patent 5,505,425 in view of Wood US Patent 6,595,530. Applicant traverses this ground of rejection.

The following principle of law applies to all sec. 103 rejections. MPEP 2143.03 provides "To establish prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F2d 981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." [emphasis added] That is, to have any expectation of rejecting the claims over a single reference or a combination of references, each limitation must be taught somewhere in the applied prior art. If limitations are not found in any of the applied prior art, the rejection cannot stand. In this case, the applied prior art references clearly do not arguably teach some limitations of the claims.

Claim 1 recites in part:

"a pair of main beams, wherein the main beams are parallel and are spaced apart from each other and wherein each main beam has a first end and a second end;

a pair of angle beams, wherein each angle beam has  
a first end affixed to one of the main beams at an

outwardly joining angle of from about 20 to about 60 degrees thereto,  
and

a second end,

wherein each main beam and its respective angle beam joined thereto  
define a pair of side pieces;"

Claim 12 recites in part:

"a pair of side pieces, wherein each side piece comprises  
a main beam, wherein a length of the main beam is  
adjustable, and  
an angle beam joined to the main beam at an outward  
joining angle of from about 20 to about 60 degrees thereto,  
wherein the main beams of the two side pieces are spaced apart from and  
parallel to each other;"

The explanation of the rejection analogizes the flanges 36 (col. 2, line 52) of Shelton to the recited "angle beam", by labeling the flange 36 in Figure 1 of Shelton (reproduced at page 4 of the Office Action) as the "angle beam". The explanation of the rejection similarly analogizes the standards 28 (col. 2, line 32) of Shelton to the "main beam" recited in the present claims.

In the structure of Shelton, the flanges 36 are not joined to the standards 28. The flanges 36 are joined to the beam 12.

Claim 1 further recites in part:

"a pair of cross beams, wherein the cross beams are spaced apart  
from each other and are each affixed to the two side pieces to form a top  
frame which has a Y-shape when viewed from above;"

Claim 12 further recites in part:

"a pair of cross beams, wherein the cross beams are spaced apart from each other and are each affixed to the two side pieces;"

The explanation of the rejection acknowledges that Shelton does not teach a pair of cross beams, but asserts that it would have been obvious to modify Shelton to have two cross beams in order to make the frame system more stable. There are three responses. First, the elements (46, 48, 50) of Shelton that are analogized to the recited "cross beams" are not "each affixed to the two side pieces to form a top frame" as recited. The elements (46, 48, 50) of Shelton are affixed between the beam 12 and the coupling 49. Second, Shelton already illustrates two sets of the elements (46, 48, 50), see Figure 2. In each instance, the two sets of elements (46, 48, 50) are fixed between one of the beams 12 and the coupling 49, not between the two beams 12. Third, if the thrust of the argument is to duplicate the entire structure extending between the beams 12 as shown in Figure 2 of Shelton, there is no teaching in the applied art, either Shelton or Wood, for this proposed modification to Shelton. In fact, the only basis for this proposed modification is the present disclosure, as the proposed modification is made solely to create a facsimile of the presently claimed structure. The Examiner is not permitted to make such modifications to the prior art without such a teaching in the prior art.

Further as to claim 1, Shelton and Wood have no teaching of a "top frame which has a Y-shape when viewed from above".

Claim 1 further recites in part:

"a support base comprising

a pair of leading columns, wherein one of the leading columns is affixed to and extends downwardly from each of the main beams, and

a pair of trailing columns, wherein one of the trailing columns is affixed to and extends downwardly from each of the angle beams."

Claim 12 recites in part:

"a support base extending downwardly from the top frame, the support base comprising

a pair of leading columns, wherein one of the leading columns is affixed to each of the main beams,

a pair of trailing columns, wherein one of the trailing columns is affixed to each of the angle beams,"

The pillows 19, 20 (col. 2, line 24) of Shelton, which are analogized in the explanation of the rejection to the recited leading and trailing columns, are affixed to the longitudinal beam 12. In neither case are the pillows 19, 20 affixed to what the explanation of the rejection analogizes to the presently recited main beam or angle beam.

Each of claims 3 and 12 recites in part:

"a length of each of the leading columns and a length of each of the trailing columns is adjustable"

The explanation of the rejection asserts that it would have been obvious to make the pillows 19, 20 of Shelton adjustable in length. Applicant respectfully disagrees. Neither reference teaches that the pillows 19, 20 of Shelton should be adjustable in length. Further, there would be no point to making the pillows 19, 20 of Shelton adjustable in length, since the standards 28 of Shelton are already adjustable in length parallel to the proposed length adjustment of the pillows 19, 20. The argued basis for the modification, "adjust the clearance", is not taught by either reference.

Each of claims 5 and 13 recite in part:

"a lifting beam extending between the main beams".

Neither reference has any such teaching. The secondary beam 24 (col. 2, line 29) of Shelton is not taught to have any lifting function or capability. Instead, it provides holes 40, 41 through which a chain can be pinned to secure an axle or other vehicle part to the structure of Shelton (col. 2, lines 59-67).

The present rejection seeks to perform a hindsight reconstruction based upon unrelated references, which is technically unsupported and is legally improper.

The case authority and the MPEP provide guidance on this point. The present rejection is a sec. 103 combination rejection. It is well established that a proper sec. 103 combination rejection requires more than just finding teachings in the references of the elements recited in the claim (but which was not done here). To reach a proper teaching of an article or process through a combination of references, there must be stated an objective motivation to combine the teachings of the references, not a hindsight rationalization in light of the disclosure of the specification being examined. MPEP 2143 and 2143.01. See also, for example, In re Fine, 5 USPQ2d 1596, 1598 (at headnote 1) (Fed.Cir. 1988), In re Laskowski, 10 USPQ2d 1397, 1398 (Fed.Cir. 1989), W.L. Gore & Associates v. Garlock, Inc., 220 USPQ 303, 311-313 (Fed. Cir., 1983), and Ex parte Levingood, 28 USPQ2d 1300 (Board of Appeals and Interferences, 1993); Ex parte Chicago Rawhide Manufacturing Co., 223 USPQ 351 (Board of Appeals 1984). As stated in In re Fine at 5 USPQ2d 1598:

"The PTO has the burden under section 103 to establish a prima facie case of obviousness. [citation omitted] It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references."

And, at 5 USPQ2d 1600:

"One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

Following this authority, the MPEP states that the examiner must provide such an objective basis for combining the teachings of the applied prior art. In constructing such rejections, MPEP 2143.01 provides specific instructions as to what must be shown in order to extract specific teachings from the individual references:

“Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention when there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).”

\* \* \* \* \*

“The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).”

\* \* \* \* \*

“A statement that modifications of the prior art to meet the claimed invention would have been ‘well within the ordinary skill of the art at the time the claimed invention was made’ because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. Ex parte Levingood, 28 USPQ2d 1300 (Bd.Pat.App.& Inter. 1993).”

Here, there is set forth no objective basis for combining the teachings of the references in the manner used by this rejection, and selecting the helpful portions from each reference while ignoring the unhelpful portions. An objective basis is one set forth

in the art or which can be established by a declaration, not one that can be developed in light of the present disclosure. As discussed above, the various rationales for combining teachings from Shelton and Wood are not found in the references themselves, but are solely derived from the present application in an attempt to duplicate the presently claimed structure. If the rejection is maintained, Applicant asks that the Examiner set forth the objective basis found in the references themselves for combining the teachings of the references, and for adopting only the helpful teachings of each reference and disregarding the unhelpful teachings of the reference.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claims 6, 7, 14, and 15 are rejected under 35 USC 103 over Shelton in view of Wood and Yost US Patent 6,109,600. Applicant traverses this ground of rejection.

Each of the rejected claims is a dependent claim whose parent claim is not taught by the combination of Shelton and Wood for the reasons discussed above and which are incorporated here. Yost adds nothing in this regard. Accordingly, claims 6, 7, 14, and 15 are allowable over the applied art.

Additionally, each of claims 6 and 14 recites in part:

"the lifting beam has a pair of suspension hooks on a lower side thereof remote from the top frame"

The explanation of the rejection references col. 4, lines 34-43 of Yost. The only hook referenced in this portion of Yost is a hook that is intermediate the length of the chain and that can be used to adjust the length of the chain. That hook has nothing to do with lifting or a lifting beam, and certainly there is nothing that would suggest substituting hooks for the holes 40 of Shelton which have an entirely different function as discussed above.

Each of claims 7 and 15 recites in part:

"the lifting beam has a pair of suspension hooks on a lower side thereof remote from the top frame, and wherein the pair of suspension hooks is spaced apart from each other by either 18 inches or 30 inches"

Yost does not teach anything like the recited "suspension hooks" for the reasons stated above in relation to claims 6 and 14. Further, the recitation of the claims is not "18 inches to 30 inches", but instead "18 inches or 30 inches". There is nothing in either reference that teaches such discrete spacings.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claims 8 and 16 are rejected under 35 USC 103 over Shelton in view of Wood and Ho US Patent 5,065,989. Applicant traverses this ground of rejection.

Each of the rejected claims is a dependent claim whose parent claim is not taught by the combination of Shelton and Wood for the reasons discussed above and which are incorporated here. Ho adds nothing in this regard. Accordingly, claims 8 and 16 are allowable over the applied art.

Each of claims 8 and 16 recites in part:

"an equipment rack affixed to the pair of leading columns"

As discussed earlier, there must be an objective basis for combining the teachings of the references. Neither reference has any objective basis for importing the tool rack teaching of Ho into the structure taught by the asserted combination of the teachings of Shelton and Wood.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

Claims 11 and 19 are rejected under 35 USC 103 over Shelton in view of Wood

and Marshall US Patent 4,685,859. Applicant traverses this ground of rejection.

Each of the rejected claims is a dependent claim whose parent claim is not taught by the combination of Shelton and Wood for the reasons discussed above and which are incorporated here. Marshall adds nothing in this regard. Accordingly, claims 11 and 19 are allowable over the applied art.

Each of claims 11 and 19 recites in part:

"the support structure further includes the supported article, and wherein the supported article is an aircraft store"

Shelton teaches supporting a vehicle, see col. 1, lines 10-47. The structure selected by Shelton is specific to supporting a vehicle. There is no teaching of supporting an aircraft store. Marshall teaches supporting a part of a missile, and the structure selected by Marshall is specific to the missile part. If the teaching of Marshall as to supporting a missile part is to be imported into the structure of Shelton, then the structure of Shelton must be modified in the manner taught by Marshall to support the missile part. For example, the flanges 36, which are selected to support a vehicle part, must be replaced by the bearing member 30 of Marshall, which is selected to support a missile part. If that modification is made, then the resulting structure is even further from meeting the present claim language.

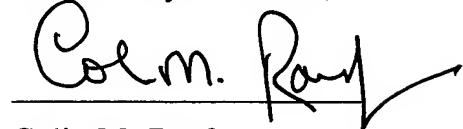
As discussed earlier, there must be an objective basis for combining the teachings of the references. Neither reference has any objective basis for importing the teaching of Marshall into the structure taught by the asserted combination of the teachings of Shelton and Wood.

Applicant asks that the Examiner reconsider and withdraw this ground of rejection.

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Applicant submits that the application is in condition for allowance, and requests such allowance.

Respectfully submitted,



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